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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JONATHAN VICTOR EASON, Defendant and Appellant.	B171629 (Los Angeles County Super. Ct. No. NA057714)

APPEAL from a judgment of the Superior Court of Los Angeles County. Arthur Jean, Jr., Judge. Affirmed.

William Flenniken, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and Marc E. Turchin, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Jonathan Eason appeals from the judgment imposed after he pled no contest to possession of cocaine base for sale (Health & Saf. Code, § 11351.5; undesignated section references are to that code), and admitted suffering three prior convictions of that offense (see § 11370, subd. (a)), and two prior "strike" convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Sentenced to a term of eight years, he contends it was error to deny his motion under Penal Code section 1538.5, to suppress evidence obtained by a warrantless search of his person upon a noncustodial arrest. Because appellant failed to renew the motion to suppress before the trial court, he has not preserved the question of the validity of the search for appellate review. We therefore affirm the judgment.

FACTS

The evidence at the preliminary hearing, received on appellant's motion to suppress, consisted of the testimony of Long Beach Police Officer Jose M. Rios. On the night of July 10, 2003, he and his partner drove to 924 East Pacific Coast Highway in Long Beach, to arrest a narcotics suspect. Officer Rios observed appellant talking to this suspect, outside a donut shop. Appellant looked toward the police car and moved 10 to 15 feet, to the shop window.

Officer Rios got out of his car and asked appellant if he minded talking. Appellant replied "Yeah," and began walking toward the officer. Appellant had his left hand clenched closed, and according to Officer Rios he was "kind of holding it behind him trying to conceal it from my view." As appellant approached, Officer Rios asked him what he had in his hand. Appellant opened it, disclosing a dollar bill that contained a green, leafy substance, which the officer believed to be marijuana. He asked appellant if this was his weed, and appellant answered, "Yeah." Officer Rios then arrested appellant for possession of marijuana, and searched him, incident to the arrest. In appellant's left front pocket, the officer found an off-white, rock-like substance, which he believed to be cocaine.

Appellant was transported for booking. While walking to the booking area, he stated that he had additional rock cocaine in his shorts. A packet of it was recovered at

booking. After being advised of and waiving his rights under *Miranda v. Arizona* (1966) 384 U.S. 436, appellant told Officer Rios that he was unemployed, and was selling "a couple of chips" in order to help his family.

It was stipulated that a police criminalist would testify that the initial rock weighed .23 grams, the packet weighed 1.27 grams, and that both contained cocaine base. After reciting his training and experience in narcotics enforcement, Officer Rios opined that the cocaine had been possessed for sale.

Before the magistrate (Judge Lord), appellant argued that the search of his person had been a booking search, which was invalid because, under § 11357, subdivision (b), a person arrested for possessing 28.5 grams or less of marijuana is subject to citation to appear, "and shall not be subjected to booking." (*Ibid.*) The prosecutor contended that the search had been lawful because supported by probable cause to believe that appellant possessed additional marijuana or drugs beyond those visible in his hand. Agreeing with this contention, the magistrate denied the motion to suppress, and held appellant to answer.

Appellant did not renew his motion to suppress before the superior court. Instead, appellant accepted an offer by the court (Judge Jean) that if appellant pled guilty or no contest to all charges, the court in sentencing would strike one of his two "strike" convictions (of 1982 and 1986), as well as the enhancing allegations under section 11370, subdivision (a), and impose a midterm sentence of four years, doubled to eight years because of the remaining "strike" (Pen. Code, §§ 667, subd. (e)(1), 1170.12, subd. (c)(1)). Upon appellant's plea, the court so sentenced him.

DISCUSSION

Appellate review of the denial of a motion under Penal Code section 1538.5 is available on appeal from a judgment predicated on a guilty or no contest plea. (*Id.*, subd. (m).) However, a precondition to such review is that the motion be made or renewed in superior court, not only at the preliminary hearing. (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896.) This requirement remains unaffected by the unification of superior and

municipal courts, which did not displace the distinct roles of the magistrate and the trial judge. (*People v. Hoffman* (2001) 88 Cal.App.4th 1, 2-3; *People v. Hart* (1999) 74 Cal.App.4th 479, 485-486.) Having failed to renew his motion to suppress before the trial court, appellant is not entitled to consideration of his sole contention on appeal.

DISPOSITION

The judgment is affirmed.

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COOPER, P.J.

We concur:

RUBIN, J.

FLIER, J.